IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) No.2143 of 2004
and
C.M.P.No.1905 of 2005

Alexander Joseph .. Petitioner

vs.

1. D.Ramajayam
2. Koulanthini
3. Abey Joseph
4. Meera Joseph .. Respondents

Civil Revision Petition against the fair and decretal orders dated 19.10.2004 made in I.A.No.1129 of 2004 in O.S.No.508 of 2003 on the file of the Principal District Munsif, Pondicherry.

For Petitioner : Mr.V.Raghavachari

For Respondents : M/s.Sai, Bharth, Ilan.

...

O R D E R

The revision petitioner is the plaintiff in the suit in O.S.No.508 of 2003 on the file of the Principal District Munsif, Pondicherry.

2. The revision petitioner filed the petition in I.A.No.1129 of 2004 under Section 151 C.P.C. praying for trial of the suit on all the issues instead of hearing the same for the purpose of valuation of the suit with reference to the Pondicherry Court Fees Act. Learned District Munsif, Pondicherry after hearing both sides directed the revision petitioner to seek the relief of declaration of title to the property and that if it is not prayed for, he has to comply with the provision under Section 27(a) of the Pondicherry Court Fees and Suits Valuation Act. The petitioner did not comply with the order and therefore the petition was dismissed with costs. Hence, the revision.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Heard learned counsel for the revision petitioner and learned counsel for the respondents.

4. The revision petitioner filed the said suit for declaration that the sale deed dated 4.9.2002 executed in favour of the second respondent/second defendant and the sale deed dated 11.4.2003 executed by the second respondent in favour of the respondents 3 and 4 herein/defendants 3 and 4 are null and void ab initio and unenforceable in the eye of law and for permanent injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the suit property by the revision petitioner. He has valued the suit under Sections 25(d) and 27(c) of the Pondicherry Court Fees and Suit Valuation Act, 1972 and paid court fee accordingly.

5. The respondents 1 and 2 filed the written statement questioning the valuation of the suit by the revision petitioner and contended inter alia that since the title of the revision petitioner under the sale deed 9.5.2002 is denied by the defendants, the suit must be valued under Section 25(b) of the said Act on the basis of the market value of the suit property and that if the market value is taken into account, the District Munsif Court will not have jurisdiction as a result of which the plaint has to be returned for presentation before the proper court.

6. Learned Principal District Munsif directed the revision petitioner as referred to above and passed the impugned order. Learned counsel for the revision petitioner has argued at the outset that the revision petitioner purchased the suit property under the sale deed dated 9.5.2002 from one Josephraj, who became the exclusive owner by virtue of the partition deed dated 12.11.1914, for valuable consideration and he continued to be in possession and enjoyment of the suit property since then in his own right. Further according to him, the vendor Josephraj, died on 29.5.2002 at Anna Nagar, Pondicherry as per document No.13 Death certificate produced along with the plaint and in spite of such factual aspect, the second respondent created the sale deed dated 4.9.2002 in respect of the suit property as if the same had been executed by the said Josephraj by impersonation long after his death and in turn he has executed the registered sale deed dated 11.4.2003 in respect of the suit property in favour of the defendants 3 and 4. Hence, he has contended that on the basis of such averments in the plaint, it has become necessary on the part of the revision petitioner to file the suit for declaration that the sale deed 4.9.2002 as null and void and for permanent injunction restraining the respondents from interfering with the petitioner's possession and enjoyment of the suit property and accordingly, the suit has been valued under appropriate provision of law. Hence, he has urged that the contentions put forth in the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

written statement filed by the respondents need not be taken into account in deciding the question with reference to valuation of the suit for the purpose of court fee and jurisdiction.

7. Further the learned counsel for the revision petitioner has relied on the decisions , NACHIMUTHU GOUNDER v. AVALNAICKENPATTI CO-OP. SOCIETY (1983-L.W. 793), V.NATARAJA IYER v. ARUNACHALAM (1989 L.W. 574), K. SUNDARAMOORTHY MUDALIAR v. MANICKAMMAL (1964 (1) M.L.J. 152), KASTHURI RADHAKRISHNAN v. A.RADHAKRISHNAN (1995-2-L.W.880), in support of his contention that the suit need not be valued on the basis of the market value of the suit property and that the valuation under Section 25(d) and 27(c) of the said Act is sufficient in the circumstances of the case.

8. It is no doubt true that since the revision petitioner is not a party to the sale deeds in favour of the respondents, he need not seek any relief for cancellation of the documents as per Section 40 of the said Act and therefore he has submitted that as per the ratio laid down in KASTHURI RADHAKRISHNAN v. A.RADHAKRISHNAN (1995-2-L.W. 880), it is sufficient for him to value the suit under Section 25(d) of the said Act for declaration that the sale deeds in favour of the respondents are null and void. Similarly, the valuation of the suit for permanent injunction under Section 27(c) would suffice the purpose for the simple reason that if the sale deeds in favour of the respondents are declared as null and void, the revision petitioner would necessarily be entitled to the relief of permanent injunction on the basis of his possession of the suit property on the date of the suit. The relevant principle of law laid down in the said decision reads as follows:-

> When a person seeks to make out title which cannot be established without removing an instrument to which he himself is a party, then, irrespective of the garb in which the suit is dressed, its substantial character must be for the cancellation of the instrument. All that had been stated in the plaint in this case is that acquisition of the property by the father of the 1st plaintiff was for the benefit of the daughter (not a party to the suit) of the first petitioner and sons of the first petitioner (petitioners 2 and 3). On the allegations in the plaint in this case, it does not appear that there was any contribution as such by the second or third petitioners in order to enable them to claim title to the property as such. In addition, it has to be pointed out that under Section 40(1) of the Act, in a suit for cancellation of a document, it must be such that it purports or operates to create, declare, assign, limit or extinguish, whether in presenti or in future, any right, title or interest in immovable property.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. Under similar circumstances, it was held in the decision that the valuation of the suit under Section 25(d) of the Tamil Nadu Court Fee and Suit Valuation Act 1955 is valid under law. It is not in controversy that the provisions under Section 25(d) and 27(c) in both the enactments are similar and therefore there is no difficulty in following the principle of law laid down in the said decision.

10. Per contra, learned counsel for the respondents has relied on the decisions in PURUSHOTTAM DASS v. HAR NARAIN (AIR 1978 Delhi 114) and KAMALESHWAR KISHORE SINGH (2001 (4) CTC 764) in support of his contention that even though the defence taken in the written statement may not be relevant for the purpose of court fee, if there is provision of law requiring the plaintiff to value the suit in a particular manner, the valuation of the suit in different way may not be permitted as the same is arbitrary and contradictory to the provision of law. Though the principles of law laid down in the said decisions are not in controversy, as has been rightly pointed out by the learned counsel for the revision petitioner, the facts involved in the said cases are different from that of the case on hand and therefore this Court is unable to follow the ratio laid down in the said decisions in so far as the facts of this case are concerned.

11. In any view of the matter, the suit has to be valued on the basis of the averments made in the plaint and if the plaint averments in this case are analysed, one would come to the irresistible conclusion that the suit has been properly valued for the purpose of court fee and jurisdiction. Hence the impugned order passed by the court below is set aside.

12. For the reasons aforesaid, the Civil Revision petition is allowed. The learned Principal District Munsif, Pondicherry is directed to dispose of the suit on all issues in accordance with law within six months from the date of furnishing a copy of this order. Consequently, C.M.P.No.1905 of 2005 is closed. However, there is no order as to costs.

dpp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

The Principal District Munsif, Pondicherry.

+ 1 cc to Mr.V. Raghavachari, Advocate SR No.20179

+ 1 cc to M/s. Sai, Bharath & Ilan, Advocate SR No.20035

TJL(CO)
SR/9.5.2006

Order in
C.R.P.(PD)No.2143 of 2004;&
C.M.P.No.1905 of 2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/